

## DEBT POLICY SUPPLEMENT

### WRITTEN POLICIES AND PROCEDURES FOR TAX-ADVANTAGED BONDS AND INTEREST RATE SWAPS

The School ~~District~~ Board of Broward County, Florida (the “Issuer” or the “Board”) has issued and may in the future issue tax-exempt obligations (including, without limitation, bonds, notes, loans, leases and certificates), tax credit obligations and “direct-pay” tax credit obligations (together, “tax-advantaged bonds”) that are subject to certain requirements under the Internal Revenue Code of 1986, as amended (the “Code”). From time to time, these transactions may also use interest rate swaps and other hedging strategies. The following procedures apply to managing tax advantaged bonds and swaps and this policy will be amended by the School Board from time to time to comply with future reporting and management requirements as needed.

#### **I. TAX-ADVANTAGED BONDS**

The Issuer has established the policies and procedures contained herein (the “Procedures”) in order to ensure that the Issuer complies with the requirements of the Code that are applicable to its tax-advantaged bonds. These Procedures, coupled with requirements contained in the Arbitrage and Tax Certificate (the “Tax Certificate”) or other operative documents executed at the time of issuance of the tax-advantaged bonds, are intended to constitute written procedures for ongoing compliance with the Federal tax requirements applicable to the bonds and for timely identification and remediation of violations of such requirements.

The tax-advantaged bonds that are covered by these Procedures include, but are not limited to, “Build America Bonds”, “Recovery Zone Economic Development Bonds”, and “Specified Tax Credit Bonds” that constitute “qualified bonds” under Section 6431 of the Code and are therefore eligible for interest subsidy payments (the “Subsidy”) from the U.S. Treasury (such Build America Bonds, Recovery Zone Economic Development Bonds and Specified Tax Credit Bonds are collectively referred to as “Direct-Pay Bonds”). Specified Tax Credit Bonds include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds and qualified school construction bonds.

#### **A. GENERAL MATTERS.**

1. Responsible Officer. The Chief Financial Officer will have overall responsibility for ensuring that the ongoing requirements described in these Procedures are met with respect to tax-advantaged bonds (the “Responsible Officer”).
2. Establishment of Procedures. The Procedures established herein will be set forth as a supplement to the existing Debt Management Policy.

3. Identify Additional Responsible Employees. The Responsible Officer shall identify any additional persons who will be responsible for each section of the Procedures, notify the current holder of that office of the responsibilities, and provide that person a copy of the Procedures.
  - a. Upon employee or officer transitions, new personnel should be advised of responsibilities under the Procedures and ensure they understand the importance of the Procedures.
  - b. If employee or officer positions are restructured or eliminated, responsibilities should be reassigned as necessary to ensure that all Procedures have been appropriately assigned.
4. Training Required. The Responsible Officer shall receive appropriate training that includes the review of and familiarity with the contents of these Procedures, review of the requirements contained in the Code applicable to each tax-advantaged bond, identification of all tax-advantaged bonds that must be monitored, identification of all facilities (or portions thereof) financed with proceeds of tax-advantaged bonds, familiarity with the requirements contained in the Tax Certificate or other operative documents contained in the transcript, and familiarity with the procedures that must be taken in order to correct noncompliance with the requirements of the Code in a timely manner.
5. Periodic Review. The Responsible Officer shall periodically review compliance with the Procedures and with the terms of the Tax Certificate to determine whether any violations have occurred so that such violations can be timely remedied through the “remedial action” regulations (Treasury Regulation §1.141-12, §1.142-2, §1.144-2, §1.145-2 or §1.147-2, as applicable) or the Voluntary Closing Agreement Program described in Internal Revenue Service (“IRS”) Notice 2008-31 (or successor guidance) and related sections of the Internal Revenue Manual. Such periodic review shall occur on an annual basis.
6. Change in Bond Terms. If any changes to the terms of the bonds are contemplated, bond counsel should be consulted. Such modifications could result in a reissuance, i.e., a deemed refunding, of the bonds which could jeopardize the status of tax-advantaged bonds, including Direct-Pay Bonds (and thereby affect the continued receipt of the Subsidy for Direct-Pay Bonds).

**B. ISSUE PRICE FOR TAX-ADVANTAGED BONDS; PREMIUM LIMIT FOR DIRECT-PAY BONDS.**

1. Issue Price. In order to document the issue price of tax-advantaged bonds, the Responsible Officer shall consult with bond counsel and obtain a written certification from the underwriter, placement agent or other purchaser of the bonds as to the offering price of the bonds that is in form and substance acceptable to the Issuer and bond counsel.

2. Premium Limit for Direct Pay-Bonds. Prior to issuing Direct-Pay Bonds, the Responsible Officer shall consult with bond counsel and the Issuer's financial advisors to assure that the premium on each maturity of the Direct-Pay Bonds (stated as a percentage of principal amount) does not exceed one-quarter of one-percent (0.25%) multiplied by the number of complete years to the earlier of the final maturity of the bonds or, generally, the earliest call date of the bonds, and that the excess of the issue price of the bonds over the price at which the bonds are sold to the underwriter or placement agent, when combined with other issuance costs paid from proceeds of the bonds, does not exceed 2% of the sale proceeds of the bonds.
3. Review of Pre-Closing Trading Activity for Direct-Pay Bonds. In connection with monitoring the premium limitation that applies to the issuance of Direct-Pay Bonds, the Responsible Officer shall ensure that a party other than the underwriter or placement agent, such as the Issuer's financial advisor, reviews the market trading activity of the bonds after their sale date but before their issuance date, answers such questions as the Responsible Officer shall reasonably ask of such party concerning such data, and produce such reports concerning the sales data as the Responsible Officer shall reasonably request. Market trading information is generally available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (EMMA) (<http://www.emma.msrb.org>). Records of reports produced, including copies of the market trading information should be maintained by the Issuer.

#### **C. IRS INFORMATION RETURN FILING.**

1. Filing of Applicable Form 8038. The Responsible Officer will confirm that bond counsel has filed the applicable information reports (such as Forms 8038, 8038-G, 8038-B or 8038-TC) for such bond issue with the IRS on a timely basis, and maintain copies of such form including evidence of timely filing as part of the transcript of the bond issue.
2. Filing of Form 8038-CP. For Direct-Pay Bonds, the Responsible Officer shall review the IRS Form 8038-CP in order to ensure that the proper amount of interest is being reported and the proper amount of Subsidy is being requested with respect to each interest payment date. The Responsible Officer shall ensure that the IRS Form 8038-CP is filed on a timely basis with respect to each interest payment date in order to receive timely payment of the Subsidy. If the Subsidy is to be paid to a person other than the Issuer (i.e., the bond trustee), the Responsible Officer shall obtain and record the contact information of that person, and ensure that it is properly shown on Form 8038-CP so that the direct payment will be made to the proper person.
3. Filing of Forms 8038-T or 8038-R. The Responsible Officer shall file the IRS Form 8038-T relating to the payment of rebate or yield reduction payments in a timely manner as discussed in Section H.12. below. The Responsible Officer shall also monitor the extent to which the Issuer is eligible to receive a refund of

prior rebate payments and provide for the timely filing for such refunds using an IRS Form 8038-R.

**D. USE OF PROCEEDS.** The Responsible Officer shall:

1. Consistent Accounting Procedures. Maintain clear and consistent accounting procedures for tracking the investment and expenditures of bond proceeds, including investment earnings on bond proceeds.
2. Reimbursement Allocations at Closing. At or shortly after closing of a bond issue, ensure that any allocations for reimbursement expenditures comply with the Tax Certificate.
3. Timely Expenditure of Bond Proceeds. Monitor that sale proceeds and investment earnings on sale proceeds of tax-advantaged bonds are spent in a timely fashion consistent with the requirements of the Tax Certificate.
4. Costs of Issuance. With respect to Direct-Pay Bonds, monitor that no more than 2% of the sale proceeds are used to pay costs of issuance.
5. Qualified Use of Proceeds of Direct-Pay Build America Bonds. With respect to Build America Bonds, determine the correct amount of available project proceeds and monitor that 100% of all sale proceeds and investment earnings on sale proceeds (other than proceeds used to pay costs of issuance or deposited in a reasonably required reserve fund) are allocated to capital expenditures in a timely fashion consistent with the requirements of the Tax Certificate.
6. Qualified Use of Proceeds of Recovery Zone Economic Development Bonds. With respect to Recovery Zone Economic Development Bonds, determine the correct amount of available project proceeds and monitor that 100% of all sale proceeds and investment earnings on sale proceeds (other than proceeds used to pay costs of issuance or deposited in a reasonably required reserve fund) are allocated to expenditures for qualified economic development purposes within the recovery zone in a timely fashion consistent with the requirements of the Tax Certificate. Ensure compliance with the “Davis Bacon” requirements described in Section G.1. below.
7. Qualified Use of Proceeds of Specified Tax Credit Bonds. With respect to Specified Tax Credit Bonds, determine the correct amount of available project proceeds and monitor that 100% of all sale proceeds and investment earnings on sale proceeds (other than proceeds used to pay costs of issuance) are allocated to qualifying expenditures that are permitted for each type of Specified Tax Credit Bond in a timely fashion consistent with the requirements of the Tax Certificate. If proceeds are not spent by the end of the “expenditure period” as defined in Section G.2. below, redeem bonds in accordance with the requirements of the Code as further described in Section G.2. below.

8. Requisitions. Utilize requisitions to draw down bond proceeds, and ensure that each requisition contains (or has attached to it) detailed information in order to establish when and how bond proceeds were spent; review requisitions carefully before submission to ensure proper use of bond proceeds to minimize the need for reallocations.
9. Final Allocation. Ensure that a final allocation of bond proceeds (including investment earnings) to qualifying expenditures is made if bond proceeds are to be allocated to project expenditures on a basis other than “direct tracing” (direct tracing means treating the bond proceeds as spent as shown in the accounting records for bond draws and project expenditures). An allocation other than on the basis of “direct tracing” is often made to reduce the private business use of bond proceeds that would otherwise result from “direct tracing” of proceeds to project expenditures. *This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than five years and 60 days after the date the bonds are issued (or 60 days after the bond issue is retired, if earlier).* Bond counsel can assist with the final allocation of bond proceeds to project costs. Maintain a copy of the final allocation in the records for the tax-advantaged bond.
10. Maintenance and Retention of Records Relating to Proceeds. Maintain careful records of all project and other costs (e.g., costs of issuance, credit enhancement and capitalized interest) and uses (e.g., deposits to a reserve fund) for which bond proceeds were spent or used. These records should be maintained separately for each issue of bonds for the period indicated under Section I. below.

**E. MONITORING PRIVATE BUSINESS USE.** With respect to tax-advantaged bonds that are subject to the private activity bond limitations provided in the Code, the Responsible Officer shall:

1. Identify Bond-Financed Facilities. Identify or “map” which outstanding bond issues financed which facilities and in what amounts.
2. Review of Contracts with Private Persons. Review all of the following contracts or arrangements with non-governmental persons or organizations or the federal government (collectively referred to as “private persons”) with respect to the bond-financed facilities which could result in private business use of the facilities:
  - a. Sales of bond-financed facilities;
  - b. Leases of bond-financed facilities;
  - c. Management or service contracts relating to bond-financed facilities;
  - d. Research contracts under which a private person sponsors research in bond-financed facilities; and

- e. Any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) granted to a private person with respect to bond-financed facilities.
- 3. Bond Counsel Review of New Contracts or Amendments. Before amending an existing agreement with a private person or entering into any new lease, management, service, or research agreement with a private person, consult bond counsel to review such amendment or agreement to determine whether it results in private business use.
- 4. Establish Procedures to Ensure Proper Use and Ownership. Establish procedures to ensure that bond-financed facilities are not used for private use without written approval of the Responsible Officer. For qualified 501(c)(3) bonds (if issued) establish procedures to ensure that the bond-financed facilities continue to be owned by a qualified 501(c)(3) organization or a governmental unit.
- 5. Analyze Use. Analyze any private business use of bond-financed facilities and, for each issue of bonds, determine whether the 10% limit on private business use (5% in the case of qualified 501(c)(3) bonds or “unrelated or disproportionate” private business use) is exceeded, and contact bond counsel or other tax advisors if either of these limits appears to be exceeded.
- 6. Remediation if Limits Exceeded. If it appears that private business use limits are exceeded, immediately consult with bond counsel to determine if a remedial action is required with respect to nonqualified bonds of the issue under Treasury Regulation §1.141-12, or if the IRS should be contacted under its Voluntary Closing Agreement Program. If tax-advantaged bonds are required to be redeemed or defeased in order to comply with the remedial action rules under Treasury Regulation §1.141-12, such redemption or defeasance must occur within 90 days of the date a deliberate action is taken that results in a violation of the private business use limits.
- 7. Maintenance and Retention of Records Relating to Private Use. Retain copies of all of the above contracts or arrangements (or, if no written contract exists, detailed records of the contracts or arrangements) with private persons for the period indicated under Section I. below.
- F. **LOAN OF BOND PROCEEDS.** Consult bond counsel if a loan of proceeds of tax-advantaged bonds is contemplated. If proceeds of tax-advantaged bonds are permitted under the Code to be loaned to other entities and are in fact so loaned, require that the entities receiving a loan of bond proceeds institute policies and procedures similar to the Procedures to ensure that the proceeds of the loan and the facilities financed with proceeds of the loan comply with the limitations provided in the Code. Require the recipients of such loans to annually report to the Issuer ongoing compliance with the Procedures and the requirements of the Code.

**G. SPECIAL REQUIREMENTS APPLICABLE TO SPECIFIED TAX CREDIT BONDS.** The Code imposes certain additional special requirements that apply to the issuance of Specified Tax Credit Bonds. For Specified Tax Credit Bonds, ensure that the following are met:

1. Davis-Bacon. Pursuant to the terms of Section 1701 of the American Recovery and Reinvestment Tax Act of 2009, projects financed with Specified Tax Credit Bonds are subject to the prevailing wage requirements of Subchapter IV of Chapter 31 of Title 40, United States Code. Note that these requirements also apply to the issuance of Recovery Zone Economic Development Bonds.
2. Spending Requirements. Although these may seem similar to “temporary period requirements,” the “spending requirements” applicable to Specified Tax Credit Bonds are hard and fast rules that if not met may cause payments of the Subsidy on some or all of the Specified Tax Credit Bonds to be lost or revoked and will require redemption of such bonds. The spending requirements are as follows:
  - a. 100% of the sale proceeds and investment proceeds must be spent within the 3 year period beginning on the date of issuance (unless such period is extended as described below) (the “expenditure period”);
  - b. a binding commitment with a third party to spend at least 10 percent of the sale proceeds and investment proceeds (other than the amount spent on costs of issuance) (“available project proceeds”) will be incurred within the six month period beginning on the date of issuance;
  - c. to the extent less than 100% of available project proceeds are not spent by the end of the expenditure period for qualified purposes, the Issuer must redeem all of the “nonqualified bonds”) within 90 days after the end of the expenditure period (this should be done with the assistance of bond counsel);
  - d. the expenditure period may be extended beyond the initial three year period only by the U.S. Treasury upon the request of the Issuer, which request must establish that the failure to spend the available project proceeds within three years was due to a reasonable cause and that spending will continue with due diligence.
3. Sinking Funds. Special rules permit Specified Tax Credit Bonds to be structured with sinking funds that will not be subject to rebate. These sinking funds must be structured as follows:
  - a. the sinking fund may not be funded more rapidly than in equal monthly installments;
  - b. the sinking fund may only be funded in a manner reasonably expected to result in an amount not greater than the amount necessary to repay the bond issue; and

- c. the yield on the investments in the sinking fund may not exceed the published permitted sinking fund yield for the sale date (which is set forth in the Tax Certificate).
4. Prohibition on Financial Conflicts of Interest. Upon the issuance of Specified Tax Credit Bonds, the Issuer certified that applicable State and local laws governing conflicts of interest were followed with respect to the bonds. If the U.S. Treasury prescribes additional conflicts of interest rules with respect to the Specified Tax Credit Bonds, such rules must also be satisfied.
5. Additional Rules Applicable to Specified Tax Credit Bonds. New clean renewable energy bonds, energy conservation bonds, qualified school construction bonds and qualified zone academy bonds each have their own set of specific and unique requirements that are applicable to the use of proceeds or eligibility as a Specified Tax Credit Bond. The Responsible Officer should consult the Tax Certificate and establish procedures for monitoring compliance with such specific requirements that are applicable to the Specified Tax Credit Bonds of the Issuer.

**H. ARBITRAGE AND REBATE COMPLIANCE.** The Responsible Officer shall:

1. Review Tax Certificate. Review each Tax Certificate to understand the specific requirements that are applicable to each tax-advantaged bond issue.
2. Arbitrage Yield. Record the arbitrage yield of the bond issue, as shown on IRS Form 8038-G, 8038-B, 8038-TC or other applicable form. If the bonds are variable rate bonds, yield must be determined on an ongoing basis over the life of the bonds as described in the Tax Certificate.
3. Temporary Periods. Review the Tax Certificate to determine the “temporary periods” for each bond issue, which are the periods during which proceeds of bonds may be invested without yield restriction.
4. Post-Temporary Period Investments. Ensure that any investment of bond proceeds after applicable temporary periods is at a yield that does not exceed the applicable bond yield, unless yield reduction payments can be made pursuant to the Tax Certificate.
5. Monitor Temporary Period Compliance. Monitor that bond proceeds (including investment earnings) are expended promptly after the bonds are issued in accordance with the expectations for satisfaction of three-year or five-year temporary periods for investment of bond proceeds and to avoid “hedge bond” status.
6. Monitor Yield Restriction Limitations. Identify situations in which compliance with applicable yield restrictions depends upon later investments (e.g., the purchase of 0% State and Local Government Securities from the U.S. Treasury

for an advance refunding escrow). Monitor and verify that these purchases are made as contemplated.

7. Establish Fair Market Value of Investments. Ensure that investments acquired with bond proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintaining records to demonstrate satisfaction of such safe harbors. Consult the Tax Certificate for a description of applicable rules.
8. Credit Enhancement, Hedging and Sinking Funds. Consult with bond counsel before engaging in credit enhancement or hedging transactions relating to a bond issue, and before creating separate funds that are reasonably expected to be used to pay debt service on bonds. Maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions that are entered into relating to a bond issue.
9. Grants/Donations to Governmental Entities. Before beginning a capital campaign or grant application that may result in gifts that are restricted to bond-financed projects (or, in the absence of such a campaign, upon the receipt of such restricted gifts), consult bond counsel to determine whether replacement proceeds may result that are required to be yield restricted.
10. Bona Fide Debt Service Fund. Even after all proceeds of a given bond issue have been spent, ensure that the debt service fund meets the requirements of a “bona fide debt service fund,” i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of: (i) the earnings on the fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the issue for the immediately preceding bond year. To the extent that a debt service fund qualifies as a bona fide debt service fund for a given bond year, the investment of amounts held in that fund is not subject to yield restriction for that year.
11. Debt Service Reserve Funds. Ensure that amounts invested in any reasonably required debt service reserve fund do not exceed the least of: (i) 10% of the stated principal amount of the bonds (or the sale proceeds of the bond issue if the bond issue has original issue discount or original issue premium that exceeds 2% of the stated principal amount of the bond issue plus, in the case of premium, reasonable underwriter’s compensation); (ii) maximum annual debt service on the bond issue; or (iii) 125% of average annual debt service on the bond issue.
12. Rebate and Yield Reduction Payment Compliance. Review the Arbitrage Rebate covenants contained in the Tax Certificate. Subject to certain rebate exceptions described below, investment earnings on bond proceeds at a yield in excess of the bond yield (i.e., positive arbitrage) generally must be rebated to the U.S. Treasury, even if a temporary period exception from yield restriction allowed the earning of positive arbitrage.

- a. Ensure that rebate and yield reduction payment calculations will be timely performed and payment of such amounts, if any, will be timely made. Such payments are generally due 60 days after the fifth anniversary of the date of issue of the bonds, then in succeeding installments every five years. The final rebate payment for a bond issue is due 60 days after retirement of the last bond of the issue. The Issuer should hire a rebate consultant if necessary.
  - b. Review the rebate section of the Tax Certificate to determine whether the “small issuer” rebate exception applies to the bond issue.
  - c. If the 6-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the Tax Certificate) may apply to the bonds, ensure that the spending of proceeds is monitored prior to semi-annual spending dates for the applicable exception.
  - d. Make rebate and yield reduction payments and file Form 8038-T in a timely manner.
  - e. Even after all other proceeds of a given bond issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the Arbitrage Rebate covenants contained in the Tax Certificate).
13. Maintenance and Retention of Arbitrage and Rebate Records. Maintain records of investments and expenditures of proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions for the period indicated in Section I. below.

**I. RECORD RETENTION.** The Responsible Officer shall ensure that for each issue of bonds, the transcript and all records and documents described in these Procedures will be maintained while any of the bonds are outstanding and during the three-year period following the final maturity or redemption of that bond issue, or if the bonds are refunded (or re-refunded), while any of the refunding bonds are outstanding and during the three-year period following the final maturity or redemption of the refunding bonds.

Certain bond documents as described in the “State of Florida General Records Schedule GS1-SL for State and Local Government Agencies”, shall be retained permanently.

## **II. INTEREST RATE SWAPS**

### **A. INTENT.**

It is the intent of the Board to conform this policy to the requirements relating to recent legislation and regulations for over-the-counter derivatives transactions under the Wall Street Transparency and Accountability Act of 2010, as supplemented and amended from time to time (herein collectively referred to as "Dodd-Frank"), enacted in response to the financial markets crisis of 2008.

### **B. QUALIFIED INDEPENDENT REPRESENTATIVE.**

Pursuant to such intent, it is the policy of the Board that: (i) the designated Qualified Independent Representative ("QIR") agrees to meet and meets the requirements specified in Commodity Futures Trading Commission Regulation 23.450(b)(1) or any successor regulation thereto (herein referred to as the "Representative Regulation"); (ii) the designated QIR shall provide a written certification to the Board to the effect that such designated QIR agrees to meet and meets the requirements specified in the Representative Regulation; (iii) school district staff monitor the performance of each designated QIR consistent with the requirements specified in the Representative Regulation; (iv) school district staff shall exercise independent judgment in consultation with the Board's designated QIR in evaluating all recommendations, if any, presented by any counterparty with respect to transactions authorized pursuant to this policy; and (v) school district staff shall rely on the advice of the Board's designated QIR with respect to transactions authorized pursuant to this policy and shall not rely on recommendations, if any, presented by any counterparty with respect to transactions authorized pursuant to this policy.

The Board will also take other steps as may be required to comply with Dodd-Frank and/or other legislative and regulatory requirements related to swap transactions.

Authority: IRS Notice 2008-31, 1RM Section 7.2.3, **Dodd-Frank Act**  
Policy Adopted: 3/18/13  
Policy Revised: